

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

UNITED STATES OF AMERICA)	
)	CRIMINAL ACTION NO.
v.)	2:19cr344-MHT
)	(WO)
WILLIE M. BURKS, III)	

OPINION AND ORDER

This case is before the court on the government's unopposed motion to continue trial. For the reasons set forth below, the court finds that defendant Willie M. Burks, III's trial, now set for July 27, 2020, should be continued pursuant to 18 U.S.C. § 3161(h).

While the granting of a continuance is left to the sound discretion of the trial judge, *see United States v. Stitzer*, 785 F.2d 1506, 1516 (11th Cir. 1986), the court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or

indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."

§ 3161(c)(1). The Act excludes any continuance based on "findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." § 3161(h)(7)(A). In making that determination, the court shall consider, among other factors, whether "the failure to grant such a continuance in the proceeding would ... result in a miscarriage of justice." § 3161(h)(7)(B)(1).

The court concludes that, in this case, the ends of justice served by granting a continuance outweigh the interest of the public and Burks in a speedy trial. Montgomery, where the trial will be held, is facing a severe outbreak of COVID-19. Furthermore, as the government notes, multiple trial witnesses are employed in prisons where there are active outbreaks among staff of COVID-19. As a result, convening the jury pool for a trial in July would pose an unacceptably high risk of

COVID-19 transmission for the jury pool and other participants in the trial, and potentially the participants' vulnerable family members. In addition, convening a jury venire during the outbreak could make it impossible to obtain a jury representative of the community as a whole. Especially given that Burks does not oppose a continuance, these concerns far outweigh the interest of Burks and the public in a speedy trial. Accordingly, the jury selection and trial of this case will be continued.

Accordingly, it is ORDERED as follows:

(1) The motion to continue the trial (doc. no. 44) is granted.

(2) The jury selection and trial for defendant Willie M. Burks, III, now set for July 27, 2020, are continued until October 19, 2020, at 10:00 a.m., in the Frank M. Johnson Jr. United States Courthouse Complex,

Courtroom 2FMJ, One Church Street, Montgomery, Alabama.

DONE, this the 22nd day of June, 2020.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE